89-1631

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JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

NO_____

CURTIS L. WRENN
P. O. Box 203
Fort Drum, NY 13603,

Petitioner.

vs

HONORABLE NICHOLAS J. WALINSKI
Senior U.S. District Judge
United States District Court
United States Courthouse
Toledo, OH 43624

Respondent,

PETITION FOR WRIT OF CERTIORARI

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

IN THE

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QUESTIONS PRESENTED FOR REVIEW

This is a case in which the court of appeals denied petitioner's request to reconsider the admissible evidence in a prior decision. In that prior decision, the employer obtained dismissal of petitioner's claims at the pre-trial level. If this Court grants the petition, it will have to decide whether the rights of the petitioner were abridged by the lower courts' decisions. More specifically:

1. Whether the District Court abused its discretion when it granted summary judgment to the defendants in C 83-201?

2. Whether the decisions in C 83-201 are contrary to decisions of this Court and the other circuit courts of appeals?

4. Whether summary judgment in favor of the defendants was appropriate in C 83-201 where the "intent" to discriminate was the primary issue?

5. Whether the court of appeals abused

its discretion by condoning the suppression of evidence and/or refusing to consider the "entire record on appeal" and/or refusing to issue a writ of mandamus to require the district court to present "facts" and/or "evidence" to support its Opinion and Order of January 24, 1986 (Appendix M).

6. Whether the decisions of the lower courts were racially motivated in retaliation for the petitioner's opposition to unlawful employment practices of the State of Ohio and other public and private employers in that State (Appendix N)?

7. Whether the presiding judge clearly abused his discretion in denying petitioner's retaliation claim when he (Judge Walinski) was acutely aware of the retaliatory actions visited upon the petitioner's by EVERY employer in the State of Ohio when he was consistently denied equal employment opportunity (App N)?

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OPINIONS DELIVERED IN THE CASE

1. Petitioner filed a complaint in the district court. That court granted summary judgment in favor of the employer, allegedly because, among other things, "the plaintiff was not an employee, but merely an applicant for employment." And "The authority to choose among many qualified applicants with diverse backgrounds rests with the selection board, and not the plaintiff." (App M).

2. The district court's decision was appealed to the Sixth Circuit. The CA denied the appeal. This Court denied the petition for write of certiorari.

3. The petitioner, not being satisfied that the courts had considered all the "facts" and/or "admissible evidence" and/or the entire record in C 83-201, filed a request for review. The petitioner, before filing his formal request, requested and

received what the district court has certified as the "entire record". (App F through L).

4. Upon receividng the entire record from the district court, the petitioner filed his Petition for Writ of Mandamus (App D). That petition was denied (App B).

5. Again the petitioner was not satisfied that the entire record had been considered by the panel of judges. Thus he filed his Petition for Rehearing In Banc (App C). The petition for rehearing was also denied by the CA (App A).

6. The petitioner now brings this action again to this Court for review. The basis for this request is that, for whatever reason, the lower courts have refused to considered the facts as demonstrated by the entire record in C 83-201 and apply the governing laws to those facts.

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under Title 28, United States Code, Sections 1254(1), 1651 and 1915. This Court is being asked to review the continuing denial of equal employment opportunity to the petitioner by employers in the State of Ohio.

Jurisdiction is also invoked under the Constitution and laws of the United States, including but not limited to the First and Fourteenth Amendments, and Title VII of the Civil Rights Act of 1964, as amended, in that the decisions of the lower courts would deprive the petitioner of free speech, procedural due process, and equal employment opportunity in his chosen profession.

The jurisdiction of this Court is also invoked to review the actions of the lower courts, in that they have made

decisions which are contrary to decisions of this Court and the other courts of appeals. Moreover, the decisions, if left standing, will invalidate a mandate of Congress, i.e., The Equal Employment Opportunity Act of 1972. More importantly, it will discourage citizens who have been discriminated against by being denied equal employment opportunity from attempting to resolve their grievance because of a lack of confidence in the federal court system.

This Court is being asked to review the decisions of the district court and the court of appeals, in that both courts have made decisions against the petitioner without considering the facts and applicable caselaw. If this decision is permitted to stand it will further encourage employers throughout America to continue their practice of denying the petitioner equal employment opportunity.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment I:

> Congress shall make no law ... abridging the freedom of speech ...; or the right of the people to peaceably ... to petition the Government for a redress of grievances.

United States Constitution, Amendment V:

> Nor shall any person ... be deprived of life, liberty, or property, without due process of law ...

United States Constitution, Amendment XIV:

> Nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

1. The petitioner was formerly employed by the State of Ohio from December 1979 to December 1980, when he, without being charged and without any prior warning notice or explanation, was summarily removed from the position of Superintendent. The petitioner filed a charge of unlawful discrimination with the EEOC. A determination was rendered that the firing was racially motivated in response to the petitioner's refusal to drop an earlier charge. See Sup. Ct. Docket Nos 88-6494 and 89-969.

2. This case concerns the petitioner's allegation that he applied for the position of executive director, a position which the employer had advertised that it was seeking applicants with his qualifications. He met the stated requirements, but despite his qualifications he was not interviewed nor hired. See Appendix K and N.

3. The petitioner has alleged that he was denied employment because of his age (date of birth February 14, 1930) and retaliation (for his previous opposition to the employer's employment practice). The district court acknowledged that the plaintiff met the "minimum requirements" for the position at issue (App K and N). The district court granted summary judgment to the employer without showing whether the successful applicant met the employer's stated qualifications for the position..

4. The lower courts have held that their decisions were based on the "entire record". The petitioner has been unable to find ANY admissible evidence, and the lower courts cite none, to support the awarding of summary judgment to the employer. The ONLY evidence entered by the employer to support its motion for summary judgment is the affidavit of the successful applicant (App L).

5. In the prior efforts in this case, the lower courts have cited the "entire record" as the basis for their decision. In response to the petition for writ of mandamus, which was based on the entire record recieved from the district court, the court of appeals refused to comment on the petitioner's request for a review of the record.

6. The primary issue in this case is the district court's decision to grant summary judgment to the employer allegedly because "The authority to choose among many qualified applicants with diverse backgrounds rests with the selection board, and not the plaintiff." The the district court offered no facts and/or admissible evidence to demonstrate that the employer considered other applicants. Moreover, the district court nor the employer or the court of appeals cited ANY facts and/or admissible

evidence to demonstrate that "many qualified applicants" applied for the position.

7. The secondary issue is the district court's assertion as a basis for denying the retaliation claim that "the plaintiff was not an employee, but merely an applicant for employment." The district court very conveniently ignored its facts and records as articulated by Judge Walinski (App N).

REASONS FOR GRANTING WRIT

ARGUMENT I - FACTUAL EVIDENCE

1. The district court's assertion that the plaintiff could not establish a retaliation claim because he "was not an employee" is clearly erroneous and falls within the "clearly erroneous standards" articulated by this Court in Anderson v. City of Bessemer City, 470 U.S. - (1985); Pullman-Standard v. Swint, 456 U.S. 273 (1982); United States v. United States Gypsum Co., 333 U.S. 364 (1948).

2. Also, the district court's unsupported allegation that "The authority to choose among many qualified applicants ..." without any supporting facts, documents and/or admissible evidence, is a clear abuse of discretion. The employer has not articulated a legitimate basis and/or business reason for denying the petitioner employment as executive director. The employer has not met the requirements of this Court as articulated in Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 254, 101 S. Ct. 1089, 1094, 67 L.Ed.2d 207 (1981). That is, the court nor the employer submitted any reasonably specific basis for rejecting the plaintiff application for employment. Thus the writ of certiorari should be granted if for no other reason that the Sixth Circuit Court of Appeals has rendered a decision in conflict with decisions of other United States courts

of appeals on the same matter, or has sanctioned such a departure by the district court, as to call for an exercise of this Court's power of supervision.

ARGUMENT II - PRIMA FACIE CLAIM

1. This Court has promulgated a trilogy of Title VII cases defining the burden of proof in disparate treatment cases: McDonnell Douglas v. Green, 411 U.S. 792 (1973); Furnco Construction Corp. v. Waters, 438 U.S. 577 (1978); and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981).

2. This Court has held that a complainant establishes a prima facie case by showing (i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that despite his qualifications, he was rejected and (iv)

that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications. In the instant case, the district court held that the plaintiff did not establish a prima facie case, despite the facts in the case demonstrating that ALL the requirements for a prima facie case of this Court were met. More specifically, in its decision at App M the court admitted that the plaintiff met the minimum requirements (the court articulated no information regarding the successful applicant's qualifications), and in a related decision (App N) the court admitted the plaintiff had been unsuccessful in obtaining employment in the State of Ohio because, among other things, the adverse publicity by the State of Ohio.

3. The Court should grant certiorari to review the order and allocation of the burdens of proof set down in the appellate

decision and the decision of the district court. The petitioner should be given an opportunity to show that the employer's reasons for refusing to hire him were a pretext for impermissible discrimination and/or retaliation (for his previous opposition to unlawful employment practices).

4. Based on the foregoing, the lower courts' assertion that the petitioner did not and could not establish a prima facie claim, is clearly erroneous. The facts in the case, as demonstrated by Appendix K, and M and N , clearly show the petitioner's qualifications, that he responded to the employer's advertisements seeking applicants with his background, that he met the requirements for the position, but despite his qualifications he was not interviewed nor hired. Of particular note in this case is Appendix N where the same presiding judge states in a related case that "Many of the

following complaints arise out of the alleged detrimental publicity (by the State of Ohio) making petitioner attempts to seek employment in related mental health fields unsuccessful in the state." This statement clearly demonstrates a prima facie case of retaliation (for the petitioner's previous opposition to the unlawful employment practices of the State of Ohio.)

ARGUMENT III- SUMMARY JUDGMENT INAPPROPRIATE

1. The district court granted summary judgment in this case allegedly because the lower courts would have us believe that summary judgment was appropriate in this case because "the plaintiff was not an employee" and "The authority to choose among many qualified applicants with diverse backgrounds ...", despite the absence of supporting admissible evidence.

2. The admissible evidence presented by the plaintiff and the decision of the district court (App K, M and N) clearly demonstrated that he had been denied equal employment opportunity by the employer. A review of the record in this case will clearly demonstrate that the standards for granting summary judgment were not adhered to by the district court.

3. The party moving for summary judgment has the burden of clearly establishing the lack of any triable issue of fact by the record properly before the court. See, e.g., Bell v. Cameron Meadows Land Co., (CA 9th cir. 1982) 669 F.2d 1278.

4. Where conflicting inferences may be drawn from the evidence before the court on a motion for summary judgment, the court must draw those inferences against the movant and in favor of the non-movant. See, e.g., United States V. Diebold, Inc., 369

U.S. 654, 82 S. Ct. 993, 8 L.E. 2d 176 (1962). Moreover, it has been recognized that summary judgment is particularly inappropriate in the context of employment discrimination retaliation claims. See, e.g., Romero v. Union Pacific R.R., 615 F.2d 1303, 22 F.E.P. 338, 343 (10th Cir., 1980); Keys v. Lutheran Family Services, 668 F.2d 356, 29 F.E.P. 253, 254-255 (8th Cir., 1981).

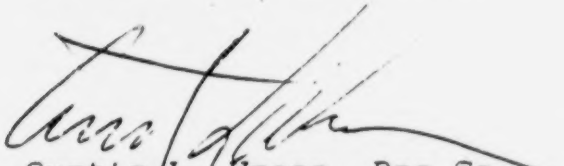
5. Based on the foregoing, the employer has not established the lack of any triable issues and thus was not entitled to summary judgment in its favor. Where, as here, the movant has not sustained this burden, summary judgment is not warranted. See, e.g., Adickes v. S.H. Kress & Co. (1970) 398 U.S. 144, 161, 90 S Ct 1598, 26 L Ed2d 142.

CONCLUSION

The decisions of the lower courts are contrary to the Constitution and laws of the United States, as interpreted by this Court and courts in the other circuits.

Based on the foregoing, the Petition for Writ of Certiorari should be granted, and this case should be remanded to the district court for a fair hearing to give the petitioner an opportunity to demonstrate that the refusal to hire him for the position at issue in this case was a pretext to mask the continuing unlawful employment practices by private and public employers, and agencies of the State of Ohio.

Respectfully submitted,



Curtis L. Wrenn, Pro Se
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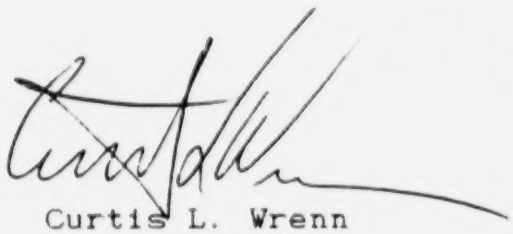
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing petition for writ of certiorari was mailed to Honorable Nicholas J. Walinski, United States District Court, United States Courthouse, Toledo, OH 43624, via first class U.S. mail, postage prepaid, on April 18, 1990.



Curtis L. Wrenn

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

NO_____

CURTIS L. WRENN
P. O. Box 203
Fort Drum, NY 13603,

Petitioner.

vs

HONORABLE NICHOLAS J. WALINSKI
Senior U.S. District Judge
United States District Court
United States Courthouse
Toledo, OH 43624

Respondent,

PETITONER'S APPENDICES

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BEST AVAILABLE COPY

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OCTOBER TERM, 1989

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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No. 89-4007

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAN 19,1990

IN RE:

CURTIS L. WRENN,

Petitioner

ORDER

BEFORE: MARTIN and NORRIS, Circuit Judges; and CONTIE, Senior Circuit Judge

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in

the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/Leonard Green
Leonard Green, Clerk

No. 89-4007

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NOV 30,1989

In Re: CURTIS L. WRENN,

Petitioner

O R D E R

BEFORE: MARTIN and NORRIS, Circuit Judges; and CONTIE, Senior Circuit Judge

The petitioner is a pro se litigant whose Title VII action resulted in a grant of summary judgment to the defendants. On direct appeal, this Court affirmed that judgment and the United States Supreme Court denied his application for a writ of certiorari. See Wrenn v. Gould, et al., Dist. Ct. No. C83-201 (Opinion and Order of January 24, 1986), aff'd, 816 F.2d 683 (6th Cir. Unpublished Order of April 3, 1987), cert. denied, 108 S. Ct. 1032 (1988). He now has filed a petition for a writ of mandamus by which he seeks further review of the district court's judgment and requests a remand of the action to the district court for a trial therein. He asserts (as he did previously) that the

district court's judgment was erroneous as a matter of law. He also complains that this Court's use of the term "prolific litigant" in its orders on appeal impugn his good name and reputation by implying this and others of his legal actions were "baseless lawsuits."

In a prior case involving the petitioner, this Court noted that a mandamus petition cannot be used to obtain yet further review of an action where both this Court and the Supreme Court had denied relief on direct appeal. See In re: Curtis L. Wrenn, No. 88-3460 (6th Cir. Unpublished Order of September 30, 1988). We conclude the present petition likewise has no merit. As to his belief that the term "prolific litigant" carries a stigma, we note only that the Supreme Court has seen cause to comment upon the petitioner's frequent and numerous applications for certiorari therein. See Wrenn v. Benson, 109 S. Ct. 1629 (1989) (per curiam).

It is **ORDERED** that the petition for a writ of mandamus is dismissed as frivolous.

ENTERED BY ORDER OF THE COURT

/s/Leonard Green, pj
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CURTIS L. WRENN,

Petitioner,

vs CASE NO 89-4007

HONORABLE NICHOLAS J. WALINSKI
SENIOR U.S. DISTRICT JUDGE,

Respondent.

PETITION FOR REHEARING IN BANC

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Honorable Nicholas J.
Walinski, Senior
U. S. District Judge
1716 Spielbusch Avenue
Toledo, OH 43624

December 5, 1989

IN THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

CURTIS L. WRENN,

Petitioner,

vs Docket No 89-4007

HONORABLE NICHOLAS J. WALINSKI,

Respondent.

PETITION FOR REHEARING IN BANC

COMES NOW the petitioner to ask the Court to reconsider its decision of November 30, 1989 on the grounds that the Court has misapprehended the facts in this case and/or misapplied the law governing the granting of summary judgment.

1. This case centers around the clearly erroneous interpretation of the law governing the granting of summary judgment in a discrimination case involving retaliation (for the petitioner's opposition to the employment practices of the State of Ohio which have been made unlawful by the Constitution and laws of the United States, including but not limited to 29 USC 621 et seq., 42 USC 1981, 1983, 2000d and 2000e).

2. The specific issues in this case involve the denial equal employment opportunity, in that the petitioner was denied equal employment opportunity by an employer despite his qualifications for the position at issue. That is, the employer advertised that it was seeking applicants with the petitioner's qualifications, he responded by submitting his application, but despite meeting the employer's stated qualifications he was not interviewed nor was he hired for the position at issue.

REASONS FOR GRANTING REHEARING

A. INTRODUCTION

1. This petition for rehearing has to do with false statements by this Court which can only be characterized as "statements maliciously made." That is, this Court prior to its Order of November 30, 1989 has repeatedly held that its decision in this case was made on the basis of the "entire record of the District Court." In its Order of November 30 the Court strangely does not mention the "entire record" which it allegedly based its prior

decision.

2. The petitioner respectfully submit that the issue is not the appropriateness of Mandamus. What is at issue here is this Court's refusal to examine the "facts of record" and to apply the law to those facts. This was not done in this and other cases presented by this petitioner.

3. In that connection, the petitioner submits that NO federal court, excluding this Court and the USDC ND of OH, and no rational person would reach the conclusion reached by this Court AFTER reviewing the Entire Record, especially the Defendant's Motion for Summary Judgment at page 236 through 257. This is particularly true considering the Opinion and Order of the District Court at page 361 through 367 of the "entire record".

4. A review of the "entire record" will demonstrate that the defendants did not meet their burden under ANY legal theory to be awarded summary judgment in their favor.

B <u>SUMMARY JUDGMENT NOT PROVEN IN 83-201</u>

1. All of the evidence before the Court on

a summary judgment motion must be construed in the light most favorable to the non-moving party. Moreover, on a motion for summary judgment, the moving party bears the burden of proving conclusively that no genuine issue of material fact exists, and that the moving party is entitled to summary judgment as a matter of law. See, e.g., Smith v. Hudson, 600 F.2d 60 (6th Cir. 1979), cert. dismissed, 444 U.S. 986 (1979); Tee-Pak, Inc. v. St. Regis Paper Company, 491 F.2d 1193 (6th Cir. 1974); Board of Education Cincinnati v. Department of H.E.W., 532 F.2d 1070 (6th Cir., 1976).

2. It is clear that the burden is on the moving party seeking summary judgment to clearly establish the nonexistence of any material issue of fact. See, e.g., United States v. Articles of Device, 527 F.2d 1008, 1011 (6th Cir., 1976). In applying that standard, this Court has further held that the evidence supporting the motion will be "closely scrutinized" while that of the opposing party should be "indulgently treated". Bohn Aluminum & Brass Corp. v. Storm King Corp., 303 F.2d

425, 427 (6th Cir., 1962).

3. Finally, where conflicting inferences may be drawn from the evidence before the Court on a motion for summary judgment, the Court must draw those inferences against the movant and in favor of the non-movant. See, e.g., United States v. Deibold, Inc.., 369 U.S. 654, 82 S. Ct. 993, 8 L.E.2d 176 (1962); Adickes v. S.H. Kress & Co., 398 U.S. 144, 90 S. Ct. 1598, 26 L.E.2d 142 (1970).

4. A review of the "entire record" will clearly demonstrate that the foregoing standards were not adhered to by this Court or the District Court. Accordingly, the petitioner renews his request for a reopening of this case.

C. FACTUAL FINDINGS IN THE CASE CLEARLY ERRONEOUS

Had this Court reviewed the "entire record" it would have determined that the factual findings of the District Court was clearly erroneous. Thus the decision of the District Court should have been reversed. See, e.g., Pullman Standard v. Swint, 456

U.S. 273, 287-90, 102 S. Ct. 1781, 1789-91, 72 L.Ed2d 66 (1982); Anderson v. City Bessemer City, U.S. __, 105 S. Ct. 1504, 1512, 84 L.Ed.2d 518 (1985) (citation omitted).

D. PETITIONER'S RETALIATION CLAIM NOT REFUTED

1. This case turns on the decision of Judge Walinski in No. 86-3084 (Exhibit #1) where he states "Many of the following complaints (including C 83-201) arise out of the alleged detrimental publicity making petitioner attempts to seek employment in related mental health fields unsuccessful in the state." That is, EVERY employer in the State of Ohio denied the petitioner equal employment opportunity whenever he responded to their advertisements where they were seeking applicants with his experience. All because the petitioner had opposed employment practices made unlawful by the Constitution and laws of the United States.

2. To establish a prima facie case of retaliation under 42 USC 2000-e(3)(a) the plaintiff must establish (1) statutorily protected expression

(such as filing a charge of discrimination with the (EEOC), (2) an adverse employment action (such as the refusal to hire), and (3) a causal link between the protected expression and the adverse action. Smally v. City of Eastonville, 640 F.2d 765, 25 F.E.P. 1059, 1061 (5th Cir., 1981). See also, Pettway v. American Cast Iron Pipe Company, 411 F.2d 998, 1005 (5th Cir., 1969); McDonnell Douglas Corp. v. Green, 411 U.S. 792, 796, 93 S. Ct. 1817, 1821, 36 L.Ed.2d 668 (1972); Aquirre v. Chula Vista Sanitary Service, 542 F.2d 779, 13 F.E.P. 1436 (9th Cir., 1976); Womack v. Munson, 619 F.2d 1292 (8th Cir., 1980).

E. DEFENDANTS' BURDEN UNDER TITLE VII NOT MET

1. A plaintiff in a Title VII suit need not prove discrimination with scientific certainty; rather, his or her burden is to prove discrimination by a preponderance of the evidence. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 252 (1981). See, also, Grano v. Department of Development, 637 F.2d 1073, 1081-1082 (6th Cir.,

1980).

2. The "preponderance of evidence" in the case at bar is demonstrated by pages 130 through 217 of the "entire record" in this case.

3. Had this Court reviewed the "entire record" in this case, focusing on whether there had been intentional discrimination against the petitioner, it would have found that more likely than not he was a victim of discrimination. This is so because the employer hired a person who not only did not meet its stated requirements for the position, but who was a member of its Board of Director. See, e.g., U.S. Postal Service Bd. of Governors v. Aikens, 450 U.S. 711, 713-15, 103 S. Ct. 1478, 1481-82, 75 L.Ed.2d 403 (1983).

CONCLUSION

Based on the foregoing, the Court should reconsider its decision of November 30, 1989 and upon reconsideration remand the case to the District Court.

The Court should remand this case to the District

Court for trial, for the reason the District Court's account of the facts is not plausible in light of the "entire record" previously submitted to this Court.

A review of the "entire record" will clearly demonstrate that the petitioner has established by preponderance of the evidence that he is entitled to a decision in his favor.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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JUDGE, UNITED STATES DISTRICT COURT
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United States Courthouse
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Respondent.

PETITION FOR WRIT OF MANDAMUS

COMES NOW the petitioner, pursuant to Rule 21, Federal Rules of Appellant Procedure, to petition this Honorable Court to issue a writ of mandamus for the purpose of reviewing the decisions of this Court and the decision of the district court in Civil Action 83-201, and the governing statute and caselaw concerning unlawful employment discrimination.

I. STATEMENT OF THE FACTS:

1. In response to the employer's advertisement of November 9, 1982 petitioner submitted his application for the position of Executive Director (Appendix U, p. 164). He met the employer's

qualifications for the position (App DD, p. 363), but despite his qualifications he was not interviewed nor hired.

2. Petitioner filed a charge of discrimination with the EEOC, and a complaint in the district court (83-201). The petitioner filed a motion for summary judgment (App. U, p. 130-217), and the defendants filed a cross motion for summary judgment. The district court granted the motion of the defendants.

3. The petitioner appealed the district court's decision to this Court. The appeal was apparently denied.

4. This Court has repeatedly used its decision in this case to disparage the petitioner's name and reputation, by, among other thing, alleging that he is a litigious person.

II. REASONS THE PETITION SHOULD BE GRANTED

1. This Court has made numerous decisions on the basis of its decision in the Gould case (83-201). The numerous decisions of this Court have NOT been made on the basis of the facts in evident, but rather on the basis of the Gould case which itself

was contrary to the facts of record (the facts of record being the "entire record" which the petitioner received from the district court and which is incorporated herein by reference). Some examples:

a. This Court in Stone (Docket No. 88-1635) (exhibit #1) stated: "...The defendants are attorneys who represented the plaintiff in some of his litigation." This statement is clearly not supported by any facts before this or any other court. The facts clearly show that at no time has the law firm of Stone & Richardson, P.C. nor Horace Cotton or any of their associates represented the petitioner in ANY administrative proceedings and/or court of law and/or before any tribunal. Moreover, the entire case before the Court was based on professional malpractice, in that the petitioner had paid the law firm to represent him in a civil action. The firm not only withdrew its representation two weeks before the Michigan Tribunal was to hear the case, but more importantly refused to refund the retainer which the petitioner

had paid. As a result the petitioner was not only without legal representation but was unable to pay an attorney to represent him in a complex legal matter.

b. Also, in the Stone case, this Court called into question the petitioner's good name and reputation by accusing him of being a "prolific litigant", thereby alleging that he filed baseless lawsuits. The Court cites as a reference Wrenn v. Gould, 808 F.2d 493, 497 n.2 (6th Cir. 1977), cert. denied, 108 S. Ct. 1032 (1988). The petitioner respectfully submit that either the case does not exist OR that the Court has cited an erroneous case to support its disparaging comments. In that connection, the petitioner has not been able to find such a citation in any law library.

c. This Court previously upheld its decision and the decision of the USDC ND OH in Civil Action 83-201. The decisions of the two courts allegedly were made on the basis of the "record in the case." Petitioner has since obtained from the Clerk's Office of the district court what is

purported to be the "entire record in Civil Action 83-201." The "entire record" is incorporated herein by reference as Exhibit #4. The petitioner has repeatedly argued that the "facts of record" DO NOT support this Court's contention that the decision of the district court was supported by "the record." In that connection, the decision of the district court to award summary judgment to the defendants was allegedly based on the defendants' motion at Appendix Z, p. 236-266. A review of that motion will clearly demonstrate that the defendants' motion for summary judgment was based solely on the Affidavit of Althea Baldwin.

d. Based on the foregoing, the ONLY purported admissible evidence (See, e.g., Davis v. Combustion Engineering, Inc. (6th Cir. 1984) 742 F.2d 916) submitted by the defendants in 83-201 was the Affidavit of Baldwin. A careful reading of that affidavit clearly reveals that Baldwin made NO reference whatsoever to the disposition of petitioner's application submitted in response to the employer's advertisement of November 9, 1982.

it should also be noted that Baldwin was, based on her affidavit, also an applicant for the position, and therefore would not have been in a position to articulate a reason why the Board of Directors did not hire Wrenn. Accordingly, the employer in its motion for summary judgment did not meet two basic requirements:

(1) The employer did not demonstrate that there were no genuine issues of facts. See, e.g., the relative qualifications of Wrenn (a hospital administrator by training and experience) and Baldwin (a social worker).

(2) the employer did not articulate by admissible evidence the reason why Wrenn was not hired.

2. Based on the foregoing this petition should be granted. The reason being the petitioner is being "dumped" on by this and other courts and federal administrative agencies as a result of the decisions of this Court; decisions which WERE NOT supported by the evidence and/or applicable legal theories and/or governing caselaw. Moreover, this

Court has made unfounded allegations and/or unsupported statements against the petitioner, apparently for the SOLE purpose of attempting to support its allegations that he is a litigious person who files baseless lawsuits and/or administrative actions.

3. For the foregoing reasons the Court should review Exhibit #4 and determine the basis for district court's decision and refer the case for trial by that court.

SUMMARY

1. The central issue in Civil 83-201 is whether the district court abused its discretion in awarding summary judgment in favor of the employer. Appellant submits that it did, and that this Court abused its discretion in condoning the action of the district court. This is especially true considering the "entire record" which clearly does not demonstrate ANY admissible evidence to support the decision of either court.

2. The appellant submits that the appellees did not established the lack of any triable issues.

Where, as here, the movant has not sustained this burden, summary judgment is not warranted. See, e.g. Adickes v. S.H. Kress & Co. (1970) 398 US 144, 161, 90 S. Ct. 1598, 26 L. ed2d 142. The triable issues in this case include the following:

a. The district court refused to consider that the person hired for the position did not demonstrate that she met the employer's published requirements for the position. Moreover, the district court acknowledged that the petitioner met the "minimum requirements" but did not indicate that the successful candidate similarly met the stated requirements promulgated by the employer.

b. The factual disputes in the case should have precluded the granting of summary judgment to the employer. A central issue in the case concerns the "intent" of the employer in denying employment to the petitioner and hiring an unqualified member of its Board of Directors. See, e.g., Heheman v. E.W. Scripps Co. (CA 6th, 1981) 661 115 (the court of appeals held that summary judgment was improperly granted where the interpretation of an ambiguous

written agreement presented a factual issue concerning the parties' intent, which is an issue not inclined to disposition by summary judgment).

c. This case involves constitutional issues (First and Fourteenth Amendments) and important public issues (a federal agency's refusal to investigate and/or process charges of discrimination and its concerted action to preclude the plaintiff's employment, and a federally sponsored agency's continuing denial of equal employment opportunity to the petitioner) which should not be resolved by summary judgment motion. See, e.g., Board of Education, Island Trees Union Free School District No. 26 v. Pico (1982) 457 US 853, 102 S. Ct 2799, 73 L ed2d 435.

d. Record before the court. The defendants did not clearly establish the lack of any triable issue of fact by the record before the district court (the petitioner is assuming that the "entire record" which he received from the district court IS THE COMPLETE RECORD for 83-201). See, e.g., Bell v. Cameron Meadows Land Co. (CA 9th, 1982) 669 F2d

1278.

e. Plaintiff's version of the facts. The district court abused its discretion by refusing to accept the plaintiff's version of the facts in the case. At the best, the disputed facts should have been resolved in the plaintiff's favor, and thus summary judgment in favor of the defendants would have been denied and the case referred to trial. See, e.g., Bishop v. Wood (1976) 426 US 341, 96 S. Ct. 2074, 48 L ed2d 684; United States v. Diebold (1962) 369 US 654, 655, 82 S Ct 993, 8 L ed2d 176.

f. Disputed factual issues. The district court abused its discretion when it resolved factual issues in favor of the moving parties. In this case the district court granted summary judgment in favor of the defendants (by, among other things, resolving the issue of "qualifications" in favor of the defendants despite the admissible evidence, in the form of the two resumes (Wrenn and Baldwin) which clearly demonstrated that the plaintiff presented triable issues of fact. See, e.g., Rodriquez v. Bd. of Ed. of Easchester U. Free School (CA 2d, 1980)

620 F2d 362; Sankovich v. Life Ins. Co. of North America (CA 9th, 1981) 638 F2d 136.

g. Plaintiff's qualifications versus those of the successful candidate. Plaintiff's qualifications as acknowledged by the district court was a sufficient triable issue to preclude the granting of summary judgment to the defendants. See, e.g., Mason v. Continental Illinois National Bank, 704 F2d 361, 31 F.E.P. 629, 633 (7th Cir., 1983) (holding that the employee's qualifications for employment cannot be determined in the context of a motion for summary judgment).

h. Plaintiff's retaliation claims. It has been recognized that summary judgment is particularly inappropriate in the context of employment discrimination retaliation claims. See, e.g., Romero v. Union Pacific R.R., 615 F2d 1303, 22 F.E.P. 338, 343 (10th Cir., 1980); Keys v. Lutheran Family Services, 668 F2d 356, 29 F.E.P. 253, 254-255 (8th Cir., 1981).

3. Based on the foregoing - at the very least - it is clear that there was a factual dispute (which

axiomatically cannot be resolved in the context of summary judgment pleadings). Accordingly, the district court clearly erred in granting summary judgment against the appellant, considering the concerted action to deny the appellant the terms, privileges and conditions of employment.

CONCLUSION

Based on the foregoing, it is respectfully submitted that the district court clearly erred in granting summary judgment in favor of the appellees. Accordingly, this Court should vacate that judgment and remand this matter for further proceedings in accordance with applicable laws.

Respectfully submitted,

/s/Curtis L. Wrenn
Curtis L. Wrenn, Pro Se
P.O. Box 203
Fort Drum, NY 13603
Tel: (315) 772-4021

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed to the Nicholas J. Walinski, Judge, United States District Court, United States Courthouse, Toledo,

Ohio, this 25th day of October, 1989.

/s/Curtis L. Wrenn

88-3460

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

In Re:	)	
	)	
Curtis L. Wrenn,	)	
	)	
Petitioner.	)	O R D E R

Before: MILBURN, GUY and NORRIS, Circuit Judges.

On June 21, 1988, this Court entered an order denying the petitioner's application for a writ of mandamus directing the district court to disclose certain information or documents relied upon in its decision in Wrenn v. Gould, et al. Dist. Ct. No. C83-201 (Opinion and Order of January 24, 1986), aff'd, 816 F.2d 683 (6th Cir. Unpublished Order of April 3, 1987), cert. denied, 108 s. Ct. 1032 (1988). The petitioner now seeks reconsideration of that order.

The basis for the petitioner's original mandamus petition was the Freedom of Information Act, 5 U.S.C. Subsection 551 et seq. We denied mandamus relief, stating that Act had no application to federal courts. The petitioner now asserts we

should grant relief on grounds the district court's judgment (or, at least, statements made therein) were not supported by the record. In essence, the petitioner asks this Court to review the merits of the underlying action. This we will not do again. It is axiomatic that a mandamus petition cannot be used as a substitute for an appeal. See City of Cleveland v. Krupansky, 619 F.2d 572, 575 (6th Cir.), cert. denied, 449 U.S. 834 (1980). That is particularly true where, as here, the petitioner has already been afforded full appellate review of the district court's judgment.

It therefore is ORDERED that the motion for reconsideration is denied.

ENTERED BY ORDER OF THE COURT

/s/Leonard Green
Clerk

CURTIS L. WRENN
P. O. BOX 1691
ALBANY, NY 12201

Telephone:
(518) 477-2508

June 4, 1988

Mr. James Gallas, Clerk
United States District Court
108 U. S. Courthouse
Toledo, OH 43624

RE: Wrenn v. Gould, C 83-201

Dear Mr. Gallas:

This is to acknowledge receipt of a note from a member of your staff (N.W.) on my letter of May 26, 1988. The note states that:

> "The court based its decision on the case file. There are no other documents involved."

Based on the aforementioned note, this is to respectfully request that I be provided a complete copy of the case file. Moreover, I respectfully request that the copy of the file include any and all documents, pleadings, exhibits and decisions of the court in this case. Please provide the copy on or before June 13, 1988.

Enclosed please find my check for $50.00 to

defray the cost of copying. If there is an additional charge, please have a member of your staff call me and advise me of the additional costs.

Very truly yours,

/s/Curtis L. Wrenn

Enclosures

cc: Clerk, U. S. Court of Appeals
Second Circuit

CERTIFIED MAIL P688947729

United States District Court
Northern District of Ohio
Office of the Clerk

James S. Gallas
Clerk

June 28, 1988

Mr. Curtis L. Wrenn
P. O. Box 1691
Albany, NY 12201

In re: C 83-201 Wrenn vs. Gould

Dear Sir:

In reference to your letter dated June 4, 1988, the total cost for copying your case file number 83-201 would be $205.00.

Per the request of our financial director, I am sending you back your check number 2799 for the amount of $50.00 so that you may resend a new check, if you wish, for the full amount.

If you wish a copy of the docket sheet to choose what pleadings you want copied, I will gladly send you a copy with the amount of pages for each pleading marked so you can order accordingly. Just send a check made payable to: Clerk, U.S.D.C. for

$1.50 to cover the copying of the docket (3 pages total).

Sincerely,

/s/Vicki L. Lorenzen
Judge Walinski's Docket Clerk

attachment

APPENDIX H

P. O. Box 203
Fort Drum, NY 13603
August 28, 1989

James S. Callas, Clerk
United States District Court
Northern District of Ohio-Western Division
U. S. Court House
Toledo, OH 43624

RE: Wrenn v. Gould, C 83-201

Dear Mr. Callas:

Reference is made to the enclosed letter from Vicki L. Lorenzen, Judge Walinski's Docket Clerk, of June 28, 1988, regarding the above captioned case.

Enclosed please find my check for $205.00. Please mail me the complete case file of the above captioned case as soon as possible.

Very truly yours,

/s/Curtis L. Wrenn

Enclosures

CERTIFIED MAIL P382545024

EXHIBIT #4

File from the United States District Court ND of Ohio

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F - Plaintiff's Opposition to Defendant's Motion for Extension of Time.....57-58

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H - Motion for Protective Order.....70-72

I - Plaintiff's Motion in Opposition to Defendants' Motion for Protective Order.....73-74

J - Plaintiff's Motion for Partial Summary Judgment and Opposition to Defendants' Motion to Dismiss.....75-84

K - Defendants' Memorandum in Opposition to Motion for Partial Summary Judgment and in Support of Motion to Dismiss.....85-87

L - Request for Production.....88-89

M - Plaintiff's Motion to Compel Answers.....90-103

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O - Memorandum Opposing Motion to Compel.....105-106

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Q - Answer.....114-117

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T - Motion to Compel Discovery.....127-129

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

CURTIS L. WRENN
76 Birckhead Place
Toledo, OH 43608

CASE NO. C 83-201

JUDGE NICHOLAS J. WALINSKI

Defendant,

vs.

SYLVESTER M. GOULD, JR.,
Individually and as President,
Board of Directors
Neighborhood Health
Association of Toledo, Inc.
905 Nebraska
toledo, OH 43607

COMPLAINT WITH JURY DEMAND (Denial of Employment)

-and-

ALTHEA BALDWIN, Individually
and as Chairperson, Search
Committee Board of Directors
Neighborhood Health Association
of Toledo, Inc.
905 Nebraska
Toledo, OH 43607

-and-

SEARCH COMMITTEE
For Executive Director,
Cordelia Martin Health enter
Neighborhood Health Association of
Toledo, Inc.
905 Nebraska
Toledo, OH 43607

-and-

BOARD OF DIRECTORS
Neighborhood Health Association
of Toledo, Inc.
905 Nebraska
Toledo, OH 43607

-and-

NEIGHBORHOOD HEALTH ASSOCIATION OF
TOLEDO, INC.
905 Nebraska
Toledo, OH 43607,

Defendants.

COMES NOW Plaintiff, Curtis L. Wrenn, and alleges and complains of the Defendants Sylvester M. Gould, Althea Baldwin, Search Committee, Board of Director, and the Neighborhood Health Association of Toledo, Inc. (hereinafter "Defendants"), as follows:

I. PRELIMINARY STATEMENT

1. Plaintiff brings this action for wrongful denial of employment by Defendants because of plaintiff's age and because said plaintiff has opposed the employment practices of Defendants made unlawful by Title VII of the Civil Rights Act of 1964, as amended (hereinafter "Title VII"). This action seeks declaratory, monetary, injunctive and other equitable relief from these violations of the law.

II. JURISDICTION AND VENUE

2. In this action for declaratory relief, injunctive relief and damages to redress the deprivation of rights secured to the plaintiff, jurisdiction of this court is invoked pursuant to 28 U.S.C. Section 1343, 29 U.S.C. Section 621 et seq., 42 U.S.C. Section 2000d et seq., 42 U.S.C. Section 2000e et seq., 42 U.S.C. Section 1981, and 42 U.S.C. Section 1985.

3. The jurisdiction of this Court is invoked to secure protection of and to redress deprivation of rights secured by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq., providing for injunctive and other relief against discrimination in employment on the basis of race, religion, sex and national origin; the thirteenth amendment to the United States Constitution and 42 U.S.C. Section 1981 providing for the equal rights of all persons in every state and territory within the United States; the fourteenth amendment to the United States Constitution and 42 U.S.C. Section 1985(3) providing

for the redress for a conspiracy to deprive another of his civil rights, 42 U.S.C. Section 1985(3) providing for relief from a conspiracy to deprive a person of the right, privileges and immunities guaranteed by the Constitution of the United States; 29 U.S.C. Section 621 et seq., providing for injunctive and other relief against discrimination in employment on the basis of age: 28 U.S.C. Section 1343(4), this being an action in equity and a suit authorized by law to be commenced by any person to recover damages for injury and to secure other relief under acts of Congress providing for the protection of civil rights; and 28 U.S.C. Section 1331, this being a civil action wherein the matter in controversy exceeds the some or value of ten thousand dollars ($10,000.00), exclusive of interest and costs, and arises under the Constitution and laws of the United States.

4. The unlawful employment practices alleged below were and are being committed within the Northern District of Ohio (Western Division).

III. PARTIES

5. Plaintiff, Curtis L. Wrenn, is a Black male citizen of the United States and a resident of Toledo (Lucas County) Ohio. Plaintiff's date of birth is February 14, 1930. Plaintiff applied for the position of Executive Director, a position which Defendants were accepting applicants from individuals with plaintiff's qualifications. Plaintiff was denied the position in spite of his qualifications, which consisted, inter alia, of a Master's Degree in Hospital and Health Care Administration and more than ten years of health care senior level management experience.

6. Defendant Neighborhood Health Association of Toledo, Inc. (hereinafter, "Defendant Corporation") has continuously been and is now a corporation doing business in the City of Toledo, State of Ohio, where it is engaged in a business affecting commerce. Defendant Corporation is an employer within the meaning of Title VII. Defendant Corporation hired a person under age forth (40).

7. Defendant Sylvester M. Gould, Jr. (hereinafter

"Defendant Gould"), in all pertinent respects as set forth in this Complaint, shall be deemed to have been acting in his individual capacity; alternatively, all actions and/or failures to act on the part of Defendant gould as set forth hereinafter shall be deemed to have been undertaken in his capacity as officer/agent and/or employee of Defendant Corporation.

8. Defendant Althea Baldwin (hereinafter "Defendant Baldwin"), in all pertinent respects set forth in this Complaint, shall be deemed to have been acting in her individual capacity; alternatively, all actions and/or failures to act on the part of Defendant Baldwin as set forth hereinafter shall be deemed to have been undertaken in her capacity as officer, agent, and/or employee of Defendant Corporation.

9. Defendant Search Committee and Defendant Board of Directors, in all pertinent respects set forth in this Complaint, shall be deemed to have been acting in their official capacities; alternatively, all actions and/or failures to act on the part of the

members of Defendant Search Committee and members of Defendant Board of Directors, as set forth hereinafter, shall be deemed to have been undertaken in their individual capacities.

10. Since at least January 1, 1981, the Defendant Corporation has continuously been and is now an employer engaged in an industry affecting commerce within the meaning of Section 701(b),(g) and (h) of Title VII, 42 U.S.C. Section 2000e(b),(g) and (h), and 29 U.s.C. Section 630(b).

IV. ADMINISTRATIVE PROCEDURES

11. In response to Defendants' advertisement, plaintiff submitted his resume for consideration for the position of Executive Director on or about August 24, 1982.

12. Plaintiff was interviewed by Defendants Gould and Baldwin, and other members of the Defendant Search Committee. Plaintiff was not informed of the disposition of his application following the interview.

13. On or about November 9, 1982 Defendants again advertised the position of Executive Director, and

indicated "search reopened" in the advertisement. Plaintiff submitted another copy of his resume for consideration for the position of Executive Director on or about November 9, 1982. Plaintiff was not interviewed nor was he contacted regarding his application.

14. Plaintiff was advised by letter dated December 28, 1982, signed by Defendant Gould, which stated that "we selected a candidate whose education, experience and salary requirements, more closely met the needs of our Center". Plaintiff's application, and subsequent rejection, is incorporated herein as Exhibit "A" as though fully set forth.

15. Defendant Gould's rejection letter of December 28, 1982 constitutes plaintiff third rejection for the position of Executive Director, in spite of said plaintiff's qualifications. Believing the Defendants had conspired to deny him his civil rights because of his age and previous opposition to Defendants' employment practices made unlawful by Title VII, plaintiff filed a "charge" of employment discrimination, pursuant to Titles VI and VII of the

Civil Rights Act of 1964, as amended, and the Age Discrimination in Employment Act of 1967, as amended (hereinafter "ADEA").

16. Within 180 days of the occurrence of the acts of which plaintiff claims, charges of continuing employment discrimination were filed with the U. S. Equal Employment Opportunity Commission (EEOC), the Ohio Civil Rights Commission, and the U. S. Department of Health and Human Services, on or about January 3, 1983. The charge included a charge of age discrimination.

17. Plaintiff has not received a "Notice of Right to Sue". Plaintiff's claims are based upon age discrimination and continuing acts of discrimination, and retaliation (for plaintiff having previously opposed the employment practices of Defendants made unlawful by Title VII). Plaintiff does not need to allege the exhaustion of administrative remedies to file the claim herein. See Gupta v. East Texas State University, 654 F.2d 411, 414 (5th Cir. 1981); National Organization for Women v. Sperry Rand Corp., 457 F. Supp. 1338, 1344

(D. Conn. 1978).

V. STATEMENT OF CLAIM

18. At all times material to this action, all matters regarding compensation, terms, conditions, rights and privileges of employment of the plaintiff have been governed and controlled by the Defendants. The Defendants intentionally have engaged and continues to intentionally engage in unlawful employment practices and policies at the Cordelia Martin Health Center, in violation of 42 U.S.C. Section 2000e-3(a); 42 U.S.C. Section 2000d, et seq., (and the regulations promulgated pursuant thereto, 34 C.F.R. (1007(c)); 42 U.S.C. Section 1981; 42 U.S.C. Section 1985(3); and 29 U.S.C. Section 621 et seq. The Defendants have established a hiring and promotional system for the position of Executive Director which has the effect of continuing and preserving the Defendants' policy, practice, custom and usage of limiting the employment and promotional and promotional opportunities of the plaintiff because of his age and his opposition to Defendants' employment

practices made unlawful by Title VII, and the Age Discrimination in Employment Act of 1967. The discriminatory practices include, but are not limited to, the following:

A. Failing to hire plaintiff for the position of Executive Director on at least three occasions.

B. Maintaining policies and practices which encouraged, permitted, and condoned the application and the hiring of at least one professionally unqualified member of the Board of Directors for the position of Executive Director, while knowing the individual did not meet the Board's published requirements for the position of Executive Director.

C. Maintaining policies and practices which utilize subjective, non-job related hiring criteria, which criteria operate to disparate and adversely affect plaintiff.

D. Maintaining policies and practices which utilize subjective criteria, such as applicant's oppositions to employment practices made unlawful by Title VII, in hiring decision, which criteria operate to disparately and adversely affect the

plaintiff because of his previous opposition to Defendants' employment practices made unlawful by Title VII.

E. Failing and refusing to take affirmative action to correct the effects of the discriminatory policies and practices complained of herein.

F. Maintaining policies and practices which permit, foster, encourage and condone action by members of the Board of Directors which violates their fiduciary responsibilities, including but not limited to, refusing to hire a competent professionally trained health care executive as Executive Director of the Cordelia Martin Health Center.

19. The effect of the policies and practices complained of hereintofore, has been to deprive plaintiff of equal employment opportunities and otherwise adversely to affect his status as an employee because of his age and his opposition to employment practices made unlawful by Titles VI and VII.

20. As a further result of the Defendants' above

stated actions, plaintiff has not been employed by Defendant Corporation and is being deprived of income in the form of wages and or prospective retirement benefits, social Security and other benefits due him as a worker, solely because of his age and opposition to employment practices made unlawful by Titles VI and VII, in a sum to be proven at trial.

21. Said wrongful acts and conduct by Defendants constitute a wanton, willful, malicious, intentional and reckless violation of 28 U.S.C. 1343(4) and the Constitution and laws of the United States. The conduct complained of hereintofore and hereinafter were willfully done to deprive plaintiff of the rights, privileges, and immunities secured by the Constitution and laws of the United States.

22. As a direct and proximate result of those actions and conduct on the part of the Defendants, plaintiff has and will continue to suffer severe and intense emotional distress, mental anguish, humiliation, embarrassment and loss of income and has and in the future will continue to incur

expenses and legal fees in order to ensure the vindication of his legal rights.

23. Plaintiff is now suffering and will continue to suffer irreparable injury from the Defendant's unlawful policies, practices, customs, and usages as set forth herein.

VI. PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully prays this Court to advance this case on the docket, order a speedy hearing at the earliest practicable date, cause this case be in every way expedited and upon such hearing to:

1. Issue a declaratory judgment that Defendants' acts, policies, practices and procedures complained of herein violated plaintiff's rights as secured under Titles VI and VII of the Civil Rights Act of 1963, as amended, 42 U.S.C. Sections 2000d et seq., and 2000e-3(a); 42 U.S.C. Section 1981; 42 U.S.C. Section 1985(3); 29 U.S.C. Section 621 et seq., and the Constitution and laws of the United States; and

2. Grant plaintiff a permanent injunction enjoining the Defendants, their officers, agents, successors,

employees, attorneys assigns and other representatives, and all those acting in concert with them and at their direction, from engaging in any employment policy or practice which discriminate against any employee or member of applicant for employment or applicant for membership on the basis of age or retaliation; and

3. Order Defendants to make plaintiff whole for being adversely affected by the policies and practices described herein by providing appropriate back pay and reimbursement for lost pension, Social Security, experience, training opportunities and other benefits in an amount to be shown at trial, and other affirmative action program designed to eliminate the effects of the discriminatory practices complained of herein; and

4. Award back pay and an additional sum equal to back pay as liquidated damages for the denial of employment under the Age Discrimination in EMployment Act of 1967, as amended; and

5. Grant to plaintiff judgment against Defendants for damages in the amount of at least $500,000.00

for mental duress imposed on plaintiff through and as a result of the aforementioned discriminatory acts; and

6. Grant plaintiff injunctive relief including immediate hiring with back pay.

7. Grant to plaintiff judgment against Defendants for punitive damages in the amount of $1,000,000.00 or such other amount as is commensurate with the wrongs and the Defendants' ability to pay; and

8. Grant to plaintiff declaratory and injunctive relief enjoining the Defendants from engaging in any act or practice which violates plaintiff's civil rights and/or his Constitutional rights; and

9. Retain jurisdiction over this action to assure full compliance with the Orders of this Court and with applicable law and require Defendants to file such reports as the Court deems necessary to evaluate such compliance; and

10. Grant plaintiff his attorneys' fees, costs and disbursement; and

11. Grant such additional relief as the Court deems proper and just in the circumstances.

Respectfully submitted,

/s/Curtis L. Wrenn
Curtis L. Wrenn PRO SE
76 Birckhead Place
Toledo, OH 43608
Tel: (419) 255-5508

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

CURTIS L. WRENN,

Plaintiff

vs

SYLVESTER M. GOULD, et al,

Defendants

Case No. 83-201

AFFIDAVIT OF CURTIS L. WRENN

NOW COMES the Plaintiff, Curtis L. Wrenn, to state the following:

I was born to King George and Viola Head Wrenn on February 14, 1930 in Emille, Sumter County, Alabama. I am graduate of A. H. Parker High School, Birmingham, Alabama. Post-high school education includes various military schools prior to my retirement from the United States Army on December 1, 1970; a bachelor degree in Business from the University of Nebraska-Omaha; a certificate in Health Care Administration from the University of Alabama-Birmingham; and a master's degree in Health Care Administration from the Medical College of Virginia-Virginia Commonwealth University.

My professional recognition includes being elected a

Fellow in the American Academy of Medical Administrators.

My work experience in hospital and health care administration includes the following:

1. Administrator, Richmond Community Hospital, Richmond, Virginia from November 1970 to August 1973.

2. Administrative Resident, Medical Center Hospitals, Norfolk, Virginia from August 1974 to April 1975.

3. corporate Director of Personnel, Medical Center Hospitals, Norfolk, Virginia from April 1975 to April 1976.

4. Associate Director for Administration, University of Maryland Hospital, Baltimore, Maryland from May 1976 to July 1978.

5. Administrator/Chief Executive Officer, Anoka State Hospital, Anoka, Minnesota from August 1978 to December 1979.

6. Superintendent/Chief Executive Officer, Toledo Mental Health Center, Toledo, Ohio from December 1979 to December 1980.

7. Self-employed health care management consultant, Minority Health Care Consultant, Inc. from January 1981 to September 1983.

8. Executive Director, Whitney M. Young, Jr. Health Center, Inc., Albany, New York from October 1983 to present.

During the period April 28, 1981 to present I have made three applications for employment as Executive Director (Project Director) of the Cordelia Martin Health Center of the Neighborhood Health Association of Toledo, Inc. Each application was submitted in response to an advertisement in The Toledo Blade, and was submitted as follows:

1. April 28, 1981. I was interviewed but not hired.

2. August 24, 1982. I was interviewed but not hired.

3. November 9, 1982. I was interviewed and was not hired.

As a result of being denied employment for a position in which I met the stated qualifications for the position and believing that the denial of

employment was motivated by charges of employment discrimination which I filed with the Equal Employment Opportunity Commission (EEOC) against the Toledo Mental Health Center, Ohio Department of Mental Health, I filed charges of employment discrimination against Cordelia Martin Health Center and its President, Sylvester M. Gould, Jr. The charges were filed with the EEOC, the U. S. Department of Health and Human Services, and the U. S. Department of Education on or about October 19, 1981 and on or about December 24, 1982.

The charges of employment discrimination was filed after I learned that the person hired did not have the education and experience requirements which the defendants had published in its advertisement. I also compared the successful candidate's qualifications with those required by defendants according to the published job description and found that in each example the person did not meet the listed qualifications for the position.

Further affiant saith not.

/s/Curtis L. Wrenn

Sworn to before me and subscribed in my presence

this 28th day of January, 1985.

/s/Kim L. Allen
Notary Public,
State of New York
Qualified in Albany County
No. 4791356
Commission Expires
March 30, 1985

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Curtis L. Wrenn,	)	Case NO. C-83-201
Plaintiff,	)	HON NICHOLAS J. WALINSKI
vs	)	
	)	AFFIDAVIT OF ALTHEA E. BALDWIN
Sylvester M. Gould, et al	)	Attorneys for Defendants:
Defendants.	)	
	)	Tybo Alan Wilhelms, Esq. and Bugbee & Conkle
	)	1301 Toledo Trust Bldg Toledo, Ohio 43604
	)	Tel: (419) 244-6788
	)	

***

STATE OF OHIO)
) SS.
COUNTY OF LUCAS)

The undersigned, being first duly sworn, deposes and says:

1. I was chairman of the Search Committee during the initial part of the 1982 process of interviewing and selecting a person for the position of Executive director of defendant Neighborhood Health Association of Toledo, Inc., d/b/a/ Cordelia Martin Health Center, (hereinafter "the Center"),

and have personal knowledge of the matters stated herein.

2. The Center is a non-profit corporation organized under the laws of the State of Ohio to provide ambulatory health care to indigent residents of the Toledo area. As such, the Center receives the bulk of its funding through the U.S. Department of Health & Human Services under the auspices of the Community Health Services and Facilities Act of 1961. However, the Center also receives funding from the State of Ohio, Department of Welfare. In 1982, the Center also had funding applications pending before the City of Toledo, Division of Community Development, and before the Lucas County Health Department.

3. The Center's receipt of federal funds is not for the primary purpose of objective or providing employment.

4. The position of Executive Director, which is the Center's highest ranking executive level salaried position, became vacant when the Center terminated its prior Executive Director

during the August 1982 meeting of the Board of Trustees. This action followed several weeks of tension between the Center and its prior Executive Director and which adversely affected the Center's other employees who, as shown by letters and petitions sent to the Trustees, were very angry and upset by the termination of the prior Executive Director. The tension that generated between the Center and its employees by these events was heightened by the termination of the prior Executive Director despite the employees' statements of support for her, and was a very important aspect of the Center's total situation which the Search Committee felt had to be considered as a high priority in the selection of a new Executive Director.

5. Another very important aspect of the Center's total situation that the Search Committee felt had to be weighed when selecting a new Executive Director was the fact that the Center's building project was nearly complete and the entire Center would soon be relocating from 1636 W.

Bancroft Street to 905 Nebraska Avenue.

6. After the Center's prior Executive Director was terminated, I was part of an ad hoc committee of three, known as the "triad." The triad's function was to perform the duties of the Executive Director until a permanent replacement could be found. My particular role in fulfilling these duties was to take responsibility for the Centers' personnel relations, relations which were very sensitive due to the anger of the Center's employees at the termination of the prior Executive Director. If fact, the Center's personnel situation was such that a number of employees threatened to resign in protest over the termination of the prior Executive Director.

7. Each applicant who was invited to interview was sent a copy of the job description for the position of Executive Director, a true copy of which was attached as Exhibit H to plaintiff's motion for summary judgment. Each applicant who was interviewed, including plaintiff, understood that the educational and experience criteria noted at the

end of that job description were not hard and fast requirements; instead, these criteria were preferred qualities that would enhance an applicant's chances if the applicant otherwise fit the Center's needs.

8. Following the interview of numerous candidates, during late September and/or early October 1982, and an evaluation of their respective qualifications, the opinion of the Search Committee was that none of the individual candidates represented a satisfactory choice to fill the vacant position. As regards Curtis Wrenn, the Search Committee did not believe that he would be the appropriate choice in part because of the volatile situation with the Center's employees; in other words, the employees were still very angry about the termination of the prior Executive Director and the Search Committee believed Mr. Wrenn's style of leadership, as exhibited in his interview, was too confrontational and adversarial and would merely aggravate an already difficult situation with the Centers' current employees. The Search Committee also believed that these same qualities shown during

his interview would make it impossible for Mr. Wrenn to be the effective liaison with the many other health care agencies, personnel and appropriate governmental units in the Toledo area, and which was an essential aspect of the position, especially given that the Center was about to relocate to its current Nebraska Avenue location.

9. Because the Search Committee was not satisfied with any of the initial applicants, the search for a new Executive Director was reopened in late October or early November 1982. I resigned from the committee at this time so that I could apply for the position, and was not involved, other than as a candidate, in any of the Center's later actions in selecting a new Executive Director.

10. In determining that none of the original applicants were satisfactory for the Center's needs, the Search Committee did not give any consideration to Mr. Wrenn's pending lawsuits, including the suit pending against the Center, nor to the age of any of the applicants.

Further affiant saith not.

/s/Althea E. Baldwin, M.S.W.

Sworn to before me and subscribed in my presence this 13 day of March, 1985.

/s/Tybo Alan Wilhelm
Notary Public
State of Ohio - Attorney at Law
Unexpiring commission
O.R.C. Sec 147.03

APPENDIX M

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

CURTIS L. WRENN,	)	
	)	
Plaintiff,	)	No. C 83-201
	)	
-vs-	)	OPINION and ORDER
	)	
SYLVESTER M. GOULD, etc., et al.,	)	
	)	
	)	
Defendant.	)	

* * * *

WALINSKI, J.

This cause is before the Court on plaintiff's motion for summary judgment filed February 4, 1985, defendants' opposition thereto, and defendants' motion for summary judgment filed March 15, 1985. On March 27, 1985 this Court took the motions for summary judgment under advisement, and scheduled this cause for trial by jury March 15, 1986.

The plaintiff has since filed "renewals" of the motion for summary judgment on July 22, 1985 and October 18, 1985 seeking to expedite consideration. Since the "renewals"

are duplicative and redundant under the Federal Rules of Civil Procedure, the Court will only consider any new matter included therein.

Also pending is plaintiff's motion in limine on which the Court reserved ruling subject to any offer or proof at trial.

This suit as originally filed March 7, 1983 was brought for the wrongful denial of employment pursuant to 29 U.S.C. §621 et seq., 42 U.S.C. §2000d et seq., 42 U.S.C. §1981 and 42 U.S.C. §1985(3). Jurisdiction is predicated on 28 U.S.C. §§1331 and 1343.

By order dated January 17, 1985, the Court dismissed the §1981 and §1985(3) claims, since the plaintiff admittedly was not claiming racial discrimination, and the conspiracy claim alleged only internal acts of employees or agents.

The remaining claims of plaintiff are employment discrimination by federal grantees pursuant to 42 U.S.C. §2000d-3 et seq., a claim of retaliatory action pursuant to 42 U.S.C. §2000e et seq., and an age discrimination claim

pursuant to 29 U.S.C. §621 et seq. The Court will address the claims seriatim.

PARTIES

Plaintiff, Curtis L. Wrenn, is a black male citizen of the United States, age 55, and at the time of the filing of this suit was a resident of Toledo, Lucas County, Ohio. He is presently employed in Albany, New York.

The principal defendant is the Neighborhood Health Association of Toledo, Inc. d/b/a Cordelia Martin Health Center (hereinafter "Center"), a non-profit organization providing ambulatory health care to indigents.

The remaining defendants are Sylvester M. Gould, Jr., President, Althea Baldwin, Chairperson of the Search Committee (now Executive Director of the Center), the Search Committee, and the Board of Directors.

FACTS

1. The defendant Center is largely funded by the U.S. Department of Health & Human Services. However, the funding is primarily for aid to the indigent and not for employment purposes.

2. In the summer of 1982, some turmoil not material herein resulted in the Executive Director position becoming vacant. In an advertisement placed in the Toledo Blade, the Center described the position as follows:

> Executive Director is responsible to a Board of Trustees. Experience in health care administration, financial management, fund raising and program planning and evaluation. Masters degree in public health, hospital administration or business administration, plus five years progressive management experience is required.

3. Plaintiff met the minimal education requirements with a masters degree in hospital and health administration. Plaintiff was employed from 1970 - 1973 as a hospital administrator in the Richmond (Virginia)

Community Hospital, a 25 bed facility; from 1974 - 1975 as an Administrative Resident in the Medical Center Hospital, Norfolk, Virginia; from 1975 - 1976 in the same institution as Director of Personnel in a 910 bed facility; from May, 1976 - July, 1978 in the University of Maryland Hospital, an 864 bed facility; from August 1, 1978 to December 1, 1979 as Chief Executive Officer at Anoka State Hospital, Anoka, Minnesota, a 467 bed facility; and from December 1, 1979 to December 16, 1980 as Superintendent/Chief Executive Officer of Toledo Mental Health Center, a 550 bed facility from which he was terminated. Since 1980 plaintiff has been a private consultant. The plaintiff is currently employed in Albany, New York.

Claim Under Title VI, 42 U.S.C. §2000d-3

To prevail under this claim the plaintiff must show that the federal funding involved was primarily to provide employment. This plaintiff, through counsel, as well as Judge Potter in Wrenn v. Gould, No. C 81-701 (N.D. Ohio, July

25, 1983) acknowledged that the Title VI claim cannot be maintained against the defendant agencies because their federal funding was not primarily for the purpose of providing employment.

Accordingly, summary judgment on this issue is granted for the defendants.

Claim for Retaliation, 42 U.S.C. §2000e et seq.

Although the Sixth Circuit has not directly addressed the question, other circuits have held that in order to establish a claim for retaliation, the plaintiff must allege and establish, at a minimum, that:

> 1. He has engaged in statutorily protected conduct, or has participated in an investigation or proceeding involving alleged unlawful employment practices; and
>
> 2. An adverse employment action was taken against him thereafter; and
>
> 3. A causal link exists between the protected participation and the adverse employment action.

See Canino v. EEOC, 707 F.2d 469 (11th Cir. 1983); Cohen v. Fred Meyer, Inc., 686 F.2d 793 (9th Cir. 1982); Burrus v. United Telephone

Co., 683 F.2d 339 (10th Cir. 1982); Whately v. Metropolitan Atlanta Rapid Transit, 632 F. 2d 1325 (5th Cir. 1980).

In Brown v. ASD Computing Center, 519 F.Supp. 1096 (S.D. Ohio 1981) the District Court followed the trend as applied to an employee, and further found that the plaintiff must show that the employer had a retaliatory motive.

In the case sub judice, the plaintiff was not an employee, but merely an applicant for employment. The protected activity alleged was the filing of a discrimination claim against the defendants and others contesting his termination, and other denials of employment. Plaintiff has alleged no substantiated facts establishing a causal connection or retaliatory motive. Plaintiff's self evaluation of being the best qualified applicant is a self serving declaration.

The authority to choose among many qualified applicants with diverse backgrounds rests with the selection board, and not the plaintiff. Accordingly, summary judgment for the defendant

on the claim of retaliation is granted.

Claim of Age Discrimination,
29 U.S.C. §621 et seq.

The plaintiff makes only a conclusory allegation of age discrimination which is wholly countered by the evidence. The selection board had no age requirements, nor is there evidence that age was even considered. Plaintiff's unsubstantiated allegations are insufficient to state a claim. See Locke v. Commercial Union Ins. Co., 676 F.2d 105 (6th Cir. 1982).

Accordingly, summary judgment is granted to the defendants on the age claim.

It is therefore ordered that summary judgment be granted to the defendants and against the plaintiff on all remaining claims. See Wrenn v. Lucas County Mental Health Board, No. 82-670 (N.D. Ohio 1983).

This cause is dismissed with prejudice at plaintiff's costs.

IT IS SO ORDERED.

/s/
SENIOR U.S. DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE:	
CURTIS L. WRENN	
Petitioner,	No. 86-3084
	RESPONSE TO PETITION FOR A WRIT OF MANDAMUS

* * * *

WALINSKI, J.

Pursuant to the order of the Court of Appeals for the Sixth Circuit dated March 14, 1986 requiring a response to the writ of mandamus filed January 27, 1986, the respondent notes with dismay that the petitioner has filed a notice of appeal on February 27, 1986.

The petition for a writ of mandamus is moot, since the remedy sought by petitioner was granted on February 13, 1986 by this respondent denying petitioner's motion for summary judgment which is properly before the Court of Appeals on appeal.

For further response, the District Court forwards a listing of all the petitioner's

litigation as of April 1, 1986, together with the docket sheets of the causes to emphasize the petitioner has not followed the rules of procedure in his pre se litigation. The petitioner appeals non-final orders, and then seeks mandamus to get immediate attention to his complaint. The petitioner assumes that his allegations in the complaint are factually true and indefensible, requiring judgment on the complaint with no proof necessary

The core case of petitioner's many complaints is C 81-571 wherein petitioner is represented by counsel, and involves petitioner's removal as director of the Toledo Mental Health Center. Many of the following complaints arise out of the alleged detrimental publicity making petitioner attempts to seek employment in related mental health fields unsuccessful in the state. Case No. C 81-571 was set for trial January 14, 1986 and reset to November 11, 1986 at the request of petitioner's counsel. The remaining causes of action against various combinations of individuals

and entities were stayed pending the trial in the core case , by agreement of counsel where involved.

The Court of Appeals should note that the last case filed, C 83-803, is again against the Ohio Department of Mental Health, which was named defendant in C 81-571, the first case filed.

Accordingly, the respondent prays that the petition for a writ of mandamus be dismissed as moot.

/s/signature illegible
SENIOR U.S. DISTRICT JUDGE

Toledo, Ohio.
April 9, 1986

Judge	Case Number	Caption	Status
NJW	C 81-571	Wrenn v. Lawrence P. Benson, et al	Pending-NJ Trial 11/18/86
JWP	C 81-665	Wrenn V. Myers R. Kurtz, et al.	Stayed pending C 81-571
JWP	C 81-701	Wrenn V. Sylvester M. Gould, Jr. et al	Appeal pending
NJW	C 82-7	Wrenn v. J. Clay Smith, et al.	Stayed pending C 81-571
NJW	C 82-12	Wrenn v. Bd of Directors, et al.	Stayed pending C 81-571
DJY	C 82-13	Wrenn v. Thomas M. Wernert, et al.	Dismissed 3/31/82
JWP	C 82-205	Wrenn v. State of Ohio, et al.	Consolid-ated with C 81-665
DJY	C 82-206	Wrenn v. Sylvester M. Gould, et al.	Dismissed 7/22/82
JWP	C 82-207	Wrenn v. Thomas M. Wernert, et al.	6th Cir. Mandate 6/18/85 Dist. Ct. Affirmed
JWP	C 82-256	Wrenn v. State of Ohio, et al.	Stayed pending C 81-571
NJW	C 82-257	Wrenn v. Robert P. Nimmo, et al.	Dismissed 2/8/82

NJW	C 82-326	Wrenn v. J. Clay Smith, et al.	Dismissed 2/8/82
NJW	C 82-335	Wrenn v. John P. Rogers, et al.	Stayed pending C 81-571
JWP	C 82-624	Wrenn v. Clarence Thomas, et al.	Dismissed 1/19/83
JWP	C 82-670	Wrenn v. Lucas Cty. Mental Health Bd.	6th Cir. Mandate 9/17/84 Dist. Ct. affirmed
JWP	C 82-742	Wrenn v. St. Charles Hospital	6th Cir. Mandate 2/28/86 Dist. Ct. affirmed
JWP	C 82-748	Wrenn v. Thomas M. Wernert, et al.	Consolidated with C 82-207
NJW	C 83-201	Wrenn v. Sylvester M. Gould, et al.	Appeal pending
NJW	C 83-493	Wrenn v. Dept of Mental Health etc., et al.	Appeal pending
JWP	C 83-803	Wrenn v. Ohio Dept. of Mental Health etc., et al.	Stayed pending C 81-571